

## SECOND DIVISION

[ G.R. No. 185346, June 27, 2012 ]

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER,  
VS. MIGUELITO M. LAZARO, RESPONDENT.**

[G.R. NO. 185442]

**MIGUELITO M. LAZARO, PETITIONER, VS. BANCO FILIPINO  
SAVINGS AND MORTGAGE BANK AND TEODORO O. ARCENAS,  
JR., BF RETIREMENT FUND AND PERFECTO YASAY JR. (IN  
SUBSTITUTION OF DECEASED CONRADO BANZON),  
RESPONDENTS.**

### DECISION

**SERENO, J.:**

Before this Court are two consolidated Petitions for Review under Rule 45 filed by Banco Filipino Savings and Mortgage Bank (Banco Filipino) (G.R. No. 185346) and Miguelito M. Lazaro (Lazaro) (G.R. No. 185442). Both Petitions assail the Court of Appeals (CA) 23 January 2008 Decision and 12 November 2008 Resolution in CA-G.R. SP No. 93145.

Ruling against Lazaro, the CA sustained the judgments of the courts *a quo* denying his monetary claims for salary differential, attorney's fees and profit sharing. Nevertheless, the appellate court granted him seven years of retirement differential pay covering the period within which the bank was under liquidation.

The pertinent facts are as follows:<sup>[1]</sup>

On 1 February 1968, Lazaro started working for Banco Filipino as a probationary employee. Rising from the ranks, he was promoted to the position of assistant manager, which he held until the bank was closed by the Central Bank of the Philippines on 25 January 1985. Notwithstanding the cessation of the regular operations of the bank, Lazaro was reemployed on 16 April 1992 as a member of a task force<sup>[2]</sup> assigned to collect its delinquent accounts.

After this Court adjudged that the bank's closure was illegal,<sup>[3]</sup> Banco Filipino eventually reopened in June 1992. Lazaro continued to work for the bank until he retired from his last post as assistant vice-president on 1 December 1995. Thereafter, he was paid retirement benefits for 20 years and 7 months of service pegged at his latest gross salary rate of P38,000 per month.

Lazaro, however, demanded a higher amount. Specifically, he asserted that since his employment lasted from 1 February 1968 until 1 December 1995, he should be credited with 27 years and 10 months of service. Additionally, he claimed that the

base amount of his retirement pay should be increased from ₱38,000 to ₱50,000 to reflect the salary increase given by the bank to its senior officers in December 1995.

Aside from demanding his retirement pay differential, Lazaro also required Banco Filipino to pay the 10% attorney's fees it received while foreclosing delinquent accounts. Furthermore, he sought the payment of his 10% profit share from 1984 to 1995.

Banco Filipino refused the additional demands of Lazaro. As a result, he filed a Complaint for underpayment of retirement benefits, as well as nonpayment of attorney's fees and profit shares before the Labor Arbiter (LA).

In its defense, Banco Filipino emphasized that Lazaro was entitled only to 20 years and 7 months of service, for he could not include in his employment the period of 7 years within which the bank was ordered closed.

Banco Filipino also denied the contention of Lazaro that the basis of his retirement pay should be increased from P38,000 to P50,000. According to the bank, Lazaro was not covered by the salary increase granted in December 1995, since he had resigned as early as 1 December 1995. In this regard, the bank cited the Rules of the Banco Filipino Retirement Fund as follows:<sup>[4]</sup>

The normal retirement date of a member shall be a lump sum amount or gratuity equal to one and one-half month's salary for every year of service based on the final salary of the member. Credit will be given for incomplete years pro-rated at one-twelfth (1/12) of the full years credit for each month of service.

As regards the attorney's fees, the bank argued that Lazaro was not entitled thereto, because he had merely performed his functions as a legal counsel of the bank, for which he was already compensated. Lastly, Banco Filipino refused to give profit shares without the Monetary Board's approval as required by law.

Ultimately, the LA gave credence to the bank's defenses and, hence, denied all of Lazaro's demands.<sup>[5]</sup> On appeal, the National Labor Relations Commission (NLRC) affirmed the LA's Decision.<sup>[6]</sup>

After receiving the adverse judgment, Lazaro pursued the action before the CA. The appellate court modified the LA's Decision and held that Lazaro was entitled to retirement pay differential.<sup>[7]</sup> It reasoned that, as a consequence of the bank's continued operations notwithstanding the receivership proceedings, Banco Filipino could not disclaim the work performed by Lazaro during the said period.<sup>[8]</sup> Thus, the whole duration of seven years must be included in computing his retirement pay differential.

As for the claims consisting of attorney's fees and additional retirement pay on the basis of increased salaries, the CA concurred in the LA's denial of those claims.<sup>[9]</sup> With respect to the profit shares demanded by Lazaro, it dismissed his demands, considering that the bank had already paid him in full, as evidenced by the attached

vouchers and checks.<sup>[10]</sup>

Banco Filipino and Lazaro separately moved for reconsideration, both of which the appellate court denied.<sup>[11]</sup>

In the instant Petitions, the parties question the CA's dispositions of Lazaro's monetary claims.

Banco Filipino assails the grant of a retirement pay differential. It emphasizes that the liquidation period should not be included in computing retirement benefits.

Additionally, *Banco Filipino cites Banco Filipino Staff Association v. Banco Filipino Savings and Mortgage Bank* and claims that this Court had already ruled to exclude the seven-year period of closure from the length of service of the bank's employees.<sup>[12]</sup>

On the other hand, Lazaro reiterates his demand for a higher salary base for computing his retirement pay. He also asks that his retirement pay differential be reckoned from work rendered for 27 years and 10 months. Further, he asks that the 10 months be further rounded off to one year, given that the Labor Code considers a fraction of at least six (6) months as a whole year.<sup>[13]</sup>

Lazaro also reiterates his claim for attorney's fees. He additionally denies having received his profit share in full. Instead, he claims that the amounts he received were only for the years 1984, 1994 and 1995.<sup>[14]</sup> Banco Filipino therefore still owes him profit shares covering the period 1985 to 1993.

Lazaro also brings up a matter that he raised for the first time in his Motion for Reconsideration before the CA.<sup>[15]</sup> He claims a one-day salary differential for the work he rendered on the day of his retirement on 1 December 1995.<sup>[16]</sup> Hence, he supposedly should be paid the difference between his previous salary of ₱38,000 and the new salary of ₱50,000 given to senior officers.

Additionally, he prays for moral damages, exemplary damages, attorney's fees and expenses of the suit.<sup>[17]</sup>

Accordingly, the combined issues presented for our resolution are as follows:

- I. Whether the CA gravely erred in granting retirement pay differentials to Lazaro;
- II. Whether the CA committed grievous error in dismissing Lazaro's claims for attorney's fees and profit shares; and
- III. Whether the CA committed grievous error in not addressing Lazaro's claims for a one-day salary differential and damages consisting of moral and exemplary damages, attorney's fees and expenses of suit.

### **Ruling of the Court**

## **Retirement Pay Differentials**

In essence, Banco Filipino maintains that the seven-year period when it was under liquidation should not be credited in computing Lazaro's retirement pay because, during that period, the bank was considered closed. It cites, as further basis, G.R. No. 165367 pertaining to *Banco Filipino Staff Association v. Banco Filipino Savings and Mortgage Bank*<sup>[18]</sup> to support the exclusion of the liquidation period.

This contention is without merit, for it inaccurately portrays the status of a bank under liquidation. In *Philippine Veterans Bank v. NLRC*,<sup>[19]</sup> this Court explained that banks under liquidation retain their legal personality. In fact, even if they are prohibited from conducting regular banking business, it is necessary that debts owed to them be collected.<sup>[20]</sup> Lazaro performed the duty of foreclosing debts in favor of Banco Filipino. It cannot rightfully disclaim Lazaro's work that benefitted it. Consequently, we find no grievous error committed by the CA in crediting the years covered by the liquidation period as part of Lazaro's retirement pay.

With respect to *Banco Filipino Staff Association v. Banco Filipino Savings and Mortgage Bank*, which Banco Filipino cites in order to prove that this Court had earlier excluded the seven-year period of closure from the length of service of the bank's employees, the CA read the case correctly; i.e. that this Court did not categorically exclude the seven-year period of closure from the length of service of Banco Filipino employees.<sup>[21]</sup> Thus, the bank cannot use our pronouncement in the said case to defeat Lazaro's claim for retirement pay differential.

Notably, Lazaro remains unsatisfied with the award of retirement pay differential. He seeks these further adjustments: (1) the basis for the computation of his retirement pay should be increased from P38,000 to P50,000; and (2) the retirement pay differential should include 8 years, and not just 7 years and 7 months of his service.

With respect to the claim that the base for computing the retirement pay should be P50,000 and not P38,000, the courts *a quo* found that since the applicable Rules of the Banco Filipino Retirement Fund state that the computation shall be for "each completed month of service,"<sup>[22]</sup> Lazaro – who did not complete his services for December 1995 – cannot claim the salary increase granted, when he has already left Banco Filipino, and credit it to his retirement pay. Conversely, Lazaro argues that the Rules of the Banco Filipino Retirement Fund do not explicitly state that the computation shall be for each completed month of service.<sup>[23]</sup>

Referring to the Rules of the Banco Filipino Retirement Fund, this Court observes that they refer to the "final salary" of the employee as basis for computing the latter's retirement pay.<sup>[24]</sup>

As established by the LA, the NLRC and the CA, the final salary of Lazaro was P38,000, and not P50,000.<sup>[25]</sup> This consistent factual determination can no longer be retried. It is aphoristic that a reexamination of factual findings cannot be done through a petition for review on certiorari under Rule 45 of the Rules of Court, because this Court reviews only questions of law.<sup>[26]</sup>

With regard to the second adjustment Lazaro prays for, we note that he assiduously went through the whole process of appeal to seek a rounding off of his 27 years and 10 months of work to 28 years and consequently obtain a higher retirement pay. Considering the bank's grant of 20 years and 7 months of retirement pay,<sup>[27]</sup> plus the CA's award of a 7-year retirement pay differential,<sup>[28]</sup> in effect, only 5 months worth of prorated retirement pay remains unsettled. At this juncture, this Court reminds everyone that while access to the courts is guaranteed, there must be limits thereto.<sup>[29]</sup>

We rule that the CA committed no reversible error when it did not round off Lazaro's length of service. To begin with, his plea for rounding off his length of service is mistakenly based on Article 287 of the Labor Code, which provides:

Art. 287. Retirement. – Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

**In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.**

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, **a fraction of at least six (6) months being considered as one whole year.**

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves. x x x. (Emphasis supplied.)

Lazaro cannot anchor his claim on the said provision, because governing in this case is the Rules of the Banco Filipino Retirement Fund. Indeed, as found in the Implementing Rules of the Retirement Pay Law<sup>[30]</sup> and in jurisprudence,<sup>[31]</sup> only in the absence of an applicable retirement agreement shall Article 287 of the Labor Code apply. There is a *proviso* however, that an employee's retirement benefits under any agreement shall not be less than those provided in the said article.

It cannot be gainsaid that the Rules of the Banco Filipino Retirement Fund provide for benefits lower than those in the Labor Code. In fact, the bank offers a retirement pay equivalent to one **and** one-half month salary for every year of service, a rate over and above the one-half month salary threshold provided by the law.